| 1 2    | Rachel Dollar, SBN 199977<br>Sherrill A. Oates, SBN 213763<br>Antonio L. Cortes, SBN 142356   |  |  |
|--------|---|--|--|
| 3      | SMITH DOLLAR PC Attorneys at Law  |  |  |
| 4      | 404 Mendocino Avenue, Second Floor<br>Santa Rosa, California 95401  |  |  |
| 5      | Telephone: (707) 522-1100<br>Facsimile: (707) 522-1101  |  |  |
| 6<br>7 | Attorneys for Defendants Homeward Residential, Inc. formerly known as American Home Mortgage Servicing, Inc. and Power Default Services, Inc. |  |  |
| 8      | UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  |  |  |
| 9      |   |  |  |
| 10     | SAMUEL D. ELLSWORTH and ROBIN ELLSWORTH,  | CASE NO.: SACV12-1499 AG (MLGX)                              |  |
| 11     | Plaintiffs,   | DEFENDANTS' HOMEWARD   |  |
| 12     | V.  | RESIDENTIAL, INC. AND POWER DEFAULT SERVICES, INC.'S         |  |
| 13     | AMERICAN HOME MORTGAGE SERVICING, INC., a business entity   | MOTION IN LIMINE NO. 1 RE<br>DAMAGES                         |  |
| 14     | form unknown and POWER DEFAULT<br>SERVICES, INC., a business entity form  | DI IIVII IOLIS   |  |
| 15     | unknown and DOES 1-100, inclusive,  | Judge: Andrew Guilford                                       |  |
| 16     | Defendants.   | Complaint Filed: August 2, 2012<br>Trial Date: June 18, 2013 |  |
| 17     |   | 11.01.2 000.   |  |
| 18     | Defendants Homeward Residential, Inc. formerly known as American Home   |  |  |
| 19     | Mortgage Servicing, Inc. and Power Default Services, Inc. ("Defendants") seek an  |  |  |
| 20     | order to exclude any evidence by Plaintiffs that they have suffered damages, or any   |  |  |
| 21     | comment by parties or counsel to the effect that Plaintiffs have suffered damages,  |  |  |
| 22     | with the sole exception of any evidence of mortgage payments by Plaintiffs to   |  |  |
| 23     | Defendants in excess of payments required by Plaintiffs' loan documents, as follows:  |  |  |
| 24     | 1. Plaintiffs assert three causes of action and no others: (a) Violation of   |  |  |
| 25     | Civil Code § 2923.5; (2) Violation of Business and Professions Code § 17200; and  |  |  |
| 26     | (3) an accounting.  |  |  |
| 27     | 2. Plaintiffs cannot recover dama   | ages for an alleged violation of Civil Code                  |  |



§ 2923.5. Mabry v. Superior Court, 185 Cal. App. 4th 208, 231 (2010) ("A

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| remarkable aspect of section 2923.5 is that it appears to have been carefully drafted   |
|---|
| to avoid bumping into federal law, precisely because it is limited to affording         |
| borrowers only more time when lenders do not comply with the statute"), accord id.      |
| at 236 ("By the same token, in light of the limited right to time conferred under       |
| section 2923.5, we also deny the writ petition insofar as it seeks reinstatement of any |
| claim for money damages").  |

- 3. Plaintiffs cannot recover damages for an alleged violation of Bus. & Prof. Code § 17200 because the complaint does not allege that Defendants obtained money *from Plaintiffs* by means of a violation of Civil Code § 2923.5, because a violation of Civil Code § 2923.5, if proven, is not a basis for a damage award, and because § 17200 authorizes a court to require disgorgement of money only to the party from whom it was unfairly obtained. *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1145 (Cal. 2003) ("disgorgement of money obtained through an unfair business practice is an available remedy in a representative action only to the extent that it constitutes restitution.").
- 4. For these reasons, evidence of or reference to damages has no relevance to any issue in this case and is therefore inadmissible. F. R. Evid. Rules 401 & 403. Its introduction into this trial should be prohibited to avoid the "danger of unfair prejudice, confusion of the issues, or misleading the jury." F. R. Evid. Rule 403.

21 Dated: May 24, 2013

SMITH DOLLAR PC

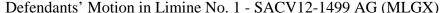
/s/ Antonio L. Cortés

By \_\_\_\_\_\_ Antonio L. Cortés
Attorneys for Defendants Homeward
Residential, Inc. formerly known as
American Home Mortgage Servicing, Inc.
and Power Default Services, Inc.

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CERTIFICATE OF SERVICE The undersigned hereby certifies that on May 24, 2013 a true and accurate copy of the foregoing was filed with the Clerk of Courts using the CF/ECF System, which will send notification of such filing to the following: Joseph R. Manning, Jr. The Law Offices of Joseph R. Attorney for Plaintiffs Telephone: (949) 361-3232 Manning, Jr. A Professional Facsimile: (866) 843-8308 Corporation 4667 MacArthur Blvd. Suite 150 BHashemi@manninglawoffice.com Email: Newport Beach, CA 92660 /s/ Antonio L. Cortés Antonio L. Cortés (142356) 

